

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

PHILIP EBHODAGHE ARABOME  
a.k.a. PHILIP EBHADACHE ARABOME  
a.k.a. PHILLIP ARABOME  
320 South Street  
Long Beach, CA 90805

Registered Nurse License No. 550834

Respondent.

Case No. 2005-157

OAH No. L2006050058

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 29, 2006

IT IS SO ORDERED this 29th day of August 2006.

BOARD OF REGISTERED NURSING

*LaTranene W Tate*

Board President

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**Registered Nurse License No. 550834**

**Respondent.**

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**OAH No. L2006050058**

**PROPOSED DECISION**

This matter came on regularly for hearing on June 13, 2006, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Ruth Ann Terry, M.P.H., R.N. (Complainant) was represented by Christina Thomas, Deputy Attorney General.

Philip Arabome (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on June 13, 2006, and the matter was submitted for decision.

**FACTUAL FINDINGS**

The Administrative Law Judge makes the following Factual Findings:

1. The Accusation was made by Complainant, who is the Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California, acting in her official capacity.

2. On December 30, 1998, Respondent was issued registered nurse license No. 550834 by the Board of Registered Nursing (Board). The license expired on January 28, 2005. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 2764.

3. On August 6, 1996, in the Municipal Court of the Long Beach Courthouse Judicial District, County of Los Angeles, State of California, in Case No. 6LL01467, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 14601.1, subdivision (a) (driving with a suspended license), a misdemeanor which, by its facts and circumstances, is substantially related to the qualifications, functions and duties of a registered nurse pursuant to California Code of Regulations, title 16, section 1444.

4. Respondent was placed on summary probation for a period of one year under various terms and conditions including payment of fines, fees and restitution totaling \$946.

5. The facts and circumstances underlying the conviction are that Respondent knowingly and intentionally drove a motor vehicle after his driver's license had been suspended for failure to pay a traffic citation fine.

6. On March 2, 1999, in the Municipal Court of the Pasadena Courthouse Judicial District, County of Los Angeles, State of California, in Case No. 8PA03201, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 415 (disturbing the peace), a misdemeanor. Complainant failed to prove that the crime for which Respondent was convicted was, either inherently or by its facts and circumstances, substantially related to the qualifications, functions or duties of a registered nurse.

7. Respondent was ordered to attend 24 domestic violence counseling sessions. On July 24, 2000, the case was dismissed in furtherance of justice pursuant to Penal Code section 1385.

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8. The facts and circumstances underlying the conviction are that Respondent and his estranged wife became embroiled in an argument. Complainant offered hearsay statements of Respondent's wife, contained in the police report, to the effect that Respondent battered his estranged wife during the altercation. Those statements were inadmissible pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, 65 Cal.Rptr.2d 860. Respondent testified that the altercation was limited to an oral argument. However, Respondent's explanation of the subject matter of the argument was inconsistent with his earlier version and was deemed not credible. Had Complainant proven that Respondent was physically abusive toward his wife during the argument, his crime may well have been substantially related to the qualifications, functions and duties of a registered nurse. Given the inadmissibility of Complainant's evidence and Respondent's lack of credibility on the issue, the matter is determined according to which party had the burden of proof. Since Complainant had the burden of proving that the altercation involved physical violence, and since she failed to sustain that burden, a substantial relationship was not established.

9. On January 16, 2003, in the Superior Court of California, County of Los Angeles, in Case No. 2LL01878, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent or more, by weight), a misdemeanor. For the reasons set forth below, this single alcohol-related conviction is not deemed to be substantially related to the qualifications, functions or duties of a registered nurse.

10. Respondent was placed on summary probation for a period of three years under various terms and conditions including incarceration for 48 hours with credit for 48 hours served, payment of fines, fees and assessments totaling \$1,397, and enrollment in, participation in, and successful completion of a three-month first offender alcohol and other drug education and counseling program. Respondent was offered the option of incarceration or community service in lieu of some of the monetary penalties.

11. The facts and circumstances underlying the conviction are that Respondent drove an automobile at a high rate of speed, well in excess of the legal speed limit, while under the influence of alcohol.

12. Respondent has been sober since the approximate time of his last conviction. He attends Alcoholics Anonymous meetings every day. In January 2005, Respondent began attending Maximus meetings pending his acceptance into the Board's diversion program. However, in February 2005, the Board's Diversion Evaluation Committee declined to accept Respondent into the program. No reason was offered for its decision.

13. Respondent has consistently met or exceeded his employers' professional expectations. He is considered competent and professional in his nursing skills.

14. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board \$7,066.25 for its costs of investigation and prosecution of the case. The costs consist of \$1,980 for investigative services, \$3,583.50 in Attorney General's fees and \$1,502.75 for Legal Assistant/Analyst fees. In her Declaration in support of her request for cost recovery (Declaration), Deputy Attorney General, Christina Thomas, broke down the prosecution costs as follows: (1) 23.75 hours spent by two Deputies Attorney General; (2) 1.25 hours spent by a Supervising Deputy Attorney General; and (3) 16.5 hours spent by three legal analysts.

15. Ms. Thomas wrote the following in her Declaration:

As the Deputy Attorney General assigned to handle this case, I performed a wide variety of tasks that were necessary for the prosecution of this matter, including, but not limited to (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the investigative material and requesting further investigation, as needed; (3) drafting pleadings, subpoenas, correspondence, memoranda and other case-related documents; (4) researching relevant points of law and fact; (5) locating and interviewing witnesses and potential witnesses; (6) consulting and/or meeting with colleague deputies, supervisory staff, experts, client staff, and investigators; (7) communicating and corresponding with Philip Ebhodaghe Arabome aka Philippe Ebohadache Arabome; (8) providing and requesting discovery; (9) preparing for and attending trial setting, status, prehearing and settlement conferences, as required, and (10) preparing for hearing.

16. Ms. Thomas's Declaration sheds no light on the tasks performed by the other Deputy Attorney General or the legal analysts who worked on the case, and only by inference accounts for the work of the Supervising Deputy Attorney General (Item No. 6). Since, according to her Declaration, it was Ms. Thomas who reviewed the investigative material, drafted pleadings, subpoenas, correspondence, etc., located and interviewed witnesses, and handled discovery, it is difficult to determine what tasks three legal analysts performed, over the course of three fiscal years, other than obtaining the court records from Respondent's three convictions.<sup>1</sup> The Attorney General's regional office that prosecuted the case was located within the same county where all three convictions occurred. Therefore, obtaining the court records should have been a fairly simple and expeditious task. How three legal analysts spent 16.5 hours on the case was not explained and cannot be inferred. Ms. Thomas's Declaration does nothing to clarify that issue.

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<sup>1</sup> The record contains copies of a few single-page letters from one of the legal analysts requesting copies of court records, and evidence of one brief telephone call between the same legal analyst and a court employee. The letters appear to be form letters used for criminal record requests.

17. In addition, Ms. Thomas's credibility with respect to her Declaration was called into question by her claim of having prepared for and attended "trial setting, status, prehearing and settlement conferences" since no such conferences were scheduled or held at the Office of Administrative Hearings. Ms. Thomas's addition of the phrase "as required" in connection with that statement serves only to render the Declaration ambiguous by making it impossible to determine what tasks, if any, were actually performed. (The same is true about the phrase "as needed" in Item No. 2.)

18. California Code of Regulations, title 1, section 1042, subdivision (b) provides:

Unless the applicable cost recovery statute provides otherwise, evidence relating to cost recovery shall be submitted in the following manner:

(1) Evidence relating to costs shall be submitted by certificate executed by the agency or its designee or by affidavit.

(2) A certificate or affidavit in support of costs incurred by the agency for services provided by regular agency employees should include sufficient information by which the ALJ can determine the costs incurred in connection with the matter and the reasonableness of such costs, for example, a general description of tasks performed, the time spent on such tasks, and the method of calculating the cost for such services.

(3) Services provided by other persons shall be supported by an affidavit executed by the provider of such services which should contain sufficient information by which the ALJ can determine the costs incurred in the matter and the reasonableness of such costs, for example, a general description of the tasks performed, the time spent on such tasks and the hourly rate or other form of compensation. In lieu of such an affidavit, the agency or its designee may attach to its certificate or affidavit copies of time and billing records upon which costs were incurred by the agency.

(4) For other costs incurred by the agency, the bill, invoice, or other similar document reflecting the cost incurred by the agency should be attached to the certificate or affidavit submitted by the agency or its designee.

(5) Where the agency seeks a cost award based on an estimate of actual costs incurred, the certificate or affidavit should explain the unavailability of actual cost information.

(6) The ALJ may, at his or her discretion, permit any party to present testimony relevant to the imposition and reasonableness of costs.

19. Business and Professions Code section 125.3 states in relevant part:

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

20. Government Code section 11425.50, subdivision (c) states:

The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

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21. Based on the record, and on the statutory and regulatory provisions referenced above, Legal Analyst fees shall be awarded in the sum of \$728 (8.0 hours @ \$91/hr.). The .5 hour claimed for work by a second Deputy Attorney General is disallowed. Pursuant to Government Code section 11425.50, subdivision (c), the hours claimed by Deputy Attorney General, Christina Thomas, are reduced by 8.0 hours at the \$146 hourly rate claimed for fiscal year 2005-2006.<sup>2</sup> Accordingly, Complainant's cost recovery is reduced to \$5,050.50, but must be further reduced to reflect her failure to prevail on each of the allegations charged against Respondent.

22. In the Accusation, Complainant alleges that cause exists to discipline Respondent's license based on, *inter alia*, three convictions that were substantially related to the qualifications, functions or duties of a registered nurse. Complainant sustained her burden of proof with respect to one of those convictions but failed to establish a substantial relationship in connection with the other two. Each of the convictions was separately investigated and prosecuted. Complainant offered no evidence to establish the amount or percentage of time spent on each. However, the record contains an investigation report with respect to the incident giving rise to the 1999 conviction for disturbing the peace (Exhibit 3). That was one of the convictions for which no substantial relationship was found. It therefore appears that more time and expense were incurred in investigating and prosecuting that conviction than the others. It may reasonably be inferred that 40 percent of the investigation and prosecution costs were incurred in connection with the 1999 conviction and that 30 percent of the costs were incurred in connection with each of the other convictions. However, although the cost recovery would have been reduced by 70 percent for Complainant's failure to prove a substantial relationship with respect to two of the convictions, Complainant did prevail on the second cause for discipline which relates to Respondent's self-administration of alcohol. The same work was necessary to investigate and prosecute that cause for discipline as was necessary to investigate and prosecute the first cause for discipline regarding the 2003 conviction. Therefore, the cost recovery is reduced by 40 percent for Complainant's failure to establish cause for discipline in connection with the 1999 conviction. Complainant shall recover investigative and prosecution costs of \$3,030.

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<sup>2</sup> Prehearing and settlement conferences normally occur in relatively close proximity to the hearing date. Although a status conference may occur at any time after an Accusation or Statement of Issues is filed with the Office of Administrative Hearings, most occur in fairly close temporal proximity to the hearing date. The hearing in the case *sub judice* took place during fiscal year 2005-2006. Therefore, the Deputy Attorney's General's fees are reduced at the hourly rate claimed for that fiscal year.



## LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to revoke or suspend registered nurse license number 550834, issued to Respondent, Philip Ebhodaghe Arabome, aka Philip Ebhadache Arabome, aka Phillip Arabome, pursuant to Business and Professions Code sections 490, 2750 and 2761, subdivision (f), for conviction of a crime substantially related to the qualifications, functions or duties of a registered nurse, as set forth in Findings 3, 4, and 5.

2. Cause does not exist to revoke or suspend registered nurse license number 550834, issued to Respondent, Philip Ebhodaghe Arabome, aka Philip Ebhadache Arabome, aka Phillip Arabome, pursuant to Business and Professions Code sections 490, 2750 and 2761, subdivision (f), for conviction of a crime substantially related to the qualifications, functions or duties of a registered nurse, as set forth in Findings 6, 7, 8, 9, 10 and 11.

3. Cause exists to revoke or suspend registered nurse license number 550834, issued to Respondent, Philip Ebhodaghe Arabome, aka Philip Ebhadache Arabome, aka Phillip Arabome, pursuant to Business and Professions Code sections 2750, 2761, subdivision (a), and 2762, subdivisions (b) and (c), for unprofessional conduct, as set forth in Findings 9, 10 and 11.

4. Cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 125.3, as set forth in Findings 14, 15, 16, 17, 18, 19, 20, 21 and 22.

5. Respondent does not deny his convictions, but does assert that the convictions do not constitute cause for discipline because they are not substantially related to the qualifications, functions or duties of a registered nurse. He is partially correct.

6. Complainant failed to establish that the altercation between Respondent and his estranged wife, that resulted in his 1999 conviction for disturbing the peace, was anything more than an oral argument of the nature frequently experienced in most marital relationships. To impose discipline on that basis would subject virtually all married registered nurses (and probably almost all married licensed professionals subject to similar statutes and regulations) to license discipline. Business and Professions Code sections 490 and 2761 should not be, and will not be, interpreted to yield such an unjust result. However, as is discussed below, Complainant did establish a substantial relationship in connection with the 1996 conviction.

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7. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

- (a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
- (b) Failure to comply with any mandatory reporting requirements.
- (c) Theft, dishonesty, fraud, or deceit.
- (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

8. In *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176, the court stated:

Honesty and truthfulness are two qualities deemed by the Legislature to bear on one's fitness and qualification to be a real estate licensee. If appellant's offense reflects unfavorably on his honesty, it may be said to be substantially related to his qualifications. (Citation.)

[¶] . . . [¶]

The crime here, of course, does not relate to the technical or mechanical qualifications of a real estate licensee, but there is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice.

9. Respondent's 1996 conviction was the result of his driving a motor vehicle with a suspended driver's license. At the time he did so, Respondent was aware that his license had been suspended, but he chose to drive anyway. That decision and conduct evidence a blatant disregard for the law and a lack of honesty and integrity as they apply to compliance with the laws to which all members of our society are governed. The fact that his conviction was not factually related to his work as a registered nurse is of no import in determining substantial relationship. However, had the conviction been work-related, that fact could have constituted a factor in aggravation.

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10. With respect to the 2003 conviction, it is commonly known that the use of alcohol, particularly in sufficient quantities as to render a person under its influence, frequently results in the exercise of poor judgment.<sup>3</sup> Therefore, acts of poor judgment involving the use of alcohol are frequently a basis for professional discipline. Such disciplinary actions may be based on criminal convictions or other inappropriate acts. However, in two such cases, one involving a physician (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757 [117 Cal.Rptr.2d 445]) and one involving an attorney (*In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375]), a substantial relationship was found between alcohol-related convictions and the qualifications, functions or duties of the licensed activity only when the respondent had suffered two or more such convictions. Further, pursuant to California Code of Regulations, title 10, section 2910, subdivision (a)(11), alcohol-related convictions have a substantial relationship for an individual licensed by the Department of Real Estate, but only if the individual has suffered two or more alcohol-related convictions. The reasoning is the same for other licensed and regulated professionals, including registered nurses. Complainant proved that Respondent suffered only one alcohol-related conviction. Therefore, a substantial relationship does not exist between that conviction and the qualifications, functions and duties of a registered nurse.

11. Respondent also argued that his 1996 conviction cannot be the basis for discipline since it occurred before he received his registered nurse license. He is incorrect. A licensing board may discipline a licensee for a pre-licensure conviction. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 72 Cal.Rptr.2d 624.)

12. Although Respondent's one conviction that bears a substantial relationship to the qualifications, functions and duties of a registered nurse is remote in time, Respondent is nonetheless subject to a substantial probationary period because he has had insufficient time to establish his sobriety. Respondent's efforts at maintaining his sobriety are laudable, but he has been sober only since the approximate time of his 2003 conviction. He will require a period of probation in order to establish his complete rehabilitation.

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<sup>3</sup> The scientific basis for this phenomenon need not be addressed here. (*Jorgensen v. Beach 'n' Bay Realty, Inc.* (1981) 125 Cal.App.3d 155, 163.)

## ORDER

### WHEREFORE, THE FOLLOWING ORDER is hereby made:

License No. 550834, issued to Respondent, Philip Ebhodaghe Arabome, aka Philip Ebhadache Arabome, aka Phillip Arabome, is revoked. However, the revocation is stayed and Respondent is placed on probation for four years upon the following terms and conditions:

- (1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this term, Respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall submit a recent 2" X 2" photograph of himself within 45 days of the effective date of the final decision.
- (2) **COMPLY WITH PROBATION PROGRAM** - Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.
- (3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.
- (4) **RESIDENCY OR PRACTICE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.
- (5) **SUBMIT WRITTEN REPORTS** - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

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(6) **PROVIDE DECISION** - Within 90 days of the effective date of this decision, Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(7) **FUNCTION AS A REGISTERED NURSE** - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order for him to comply with this condition.

(8) **EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS** - Respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to his employer and immediate supervisor prior to commencement of any nursing or other health care related employment.

Respondent shall notify the Board in writing within 72 hours after he obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within 72 hours after he is terminated from any registered nursing, other nursing, or other health care related employment, with a full explanation of the circumstances surrounding the termination.

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**(9) SUPERVISION** - Respondent shall obtain prior approval from the Board regarding his level of supervision and/or collaboration before commencing any employment as a registered nurse.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.
- (d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

**(10) EMPLOYMENT LIMITATIONS** - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

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Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

**(11) COMPLETE A NURSING COURSE(S)** - Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

**(12) COST RECOVERY** - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$3,030.30. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

**(13) VIOLATION OF PROBATION** – If Respondent violates the conditions of his probation, the Board, after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

If, during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, Respondent's license will be fully restored.

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**(14) PHYSICAL EXAMINATION** - Within 45 days of the effective date of this decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Probation Program and Respondent by telephone. Respondent shall immediately cease practice and shall not resume practice until notified by the Probation Monitor. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Probation Monitor has notified Respondent that a medical determination permits Respondent to resume practice.

**(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE** - Respondent, at his expense, shall successfully complete during the probationary period, or shall have successfully completed prior to commencement of probation, a Board-approved treatment/rehabilitation program of at least six months. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Probation Program recommendation, each week Respondent shall be required to attend at least one, but no more than five, 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

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**(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING)**

**DRUGS** - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so and are part of documented medical treatment. Respondent shall have sent to the Board, in writing and within 14 days of prescription, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

**(17) SUBMIT TO TESTS AND SAMPLES** - Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of his current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and, based on such finding, Respondent shall be considered in violation of probation.

In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation.

**(18) MENTAL HEALTH EXAMINATION** - Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and Respondent by telephone. Respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required, until the Probation Monitor has notified Respondent that a mental health determination permits Respondent to resume practice.

**(19) THERAPY OR COUNSELING PROGRAM** - Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: July 6, 2006


  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings

Exhibit A

Accusation No. 2005-157

1 BILL LOCKYER, Attorney General  
of the State of California  
2 CHRISTINA THOMAS, State Bar No. 171168  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-2557  
5 Facsimile: (213) 897-2804  
6 Attorneys for Complainant  
7  
8

9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2005-157

12 PHILIP EBHODAGHE ARABOME  
a.k.a. PHILIP EBHADACHE ARABOME  
13 a.k.a. PHILLIP ARABOME  
320 South Street  
14 Long Beach, CA 90805

OAH No.

**A C C U S A T I O N**

15 Registered Nurse License No. 550834

16 Respondent.  
17  
18

19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
23 Department of Consumer Affairs (Board).

24 2. On or about December 30, 1998, the Board issued Registered Nurse  
25 License No. 550834 to Philip Ebhodaghe Arabome, a.k.a. Philip Ebhodache Arabome, a.k.a.  
26 Phillip Arabome (Respondent). The Registered Nurse License was in full force and effect at all  
27 times relevant to the charges brought herein and will expire on January 28, 2005, unless renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use

1 impairs his or her ability to conduct with safety to the public the practice authorized by his or her  
2 license.

3 "(c) Be convicted of a criminal offense involving the prescription, consumption,  
4 or self-administration of any of the substances described in subdivisions (a) and (b) of this  
5 section, or the possession of, or falsification of a record pertaining to, the substances described in  
6 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
7 thereof."

8 8. Section 490 states:

9 "A board may suspend or revoke a license on the ground that the licensee has been  
10 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
11 of the business or profession for which the license was issued. A conviction within the meaning  
12 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
13 contendere. Any action which a board is permitted to take following the establishment of a  
14 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
15 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
16 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
17 Penal Code."

18 9. Section 125.3 provides, in pertinent part, that the Board may request the  
19 administrative law judge to direct a licentiate found to have committed a violation or violations  
20 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
21 enforcement of the case.

#### 22 FIRST CAUSE FOR DISCIPLINE

23 (Convictions of Substantially Related Crimes)

24 10. Respondent is subject to disciplinary action under sections 2750, 2761,  
25 subdivision (f), and 490, on the grounds that Respondent was convicted of crimes substantially  
26 related to the qualifications, functions, or duties of a registered nurse, as follows:

27 a. On or about January 16, 2003, in a criminal proceeding entitled *The*  
28 *People of the State of California v. Philip Ebhodaghe Arabome*, in Los Angeles County Superior

1 Court, South District, Case No. 2LL01878, Respondent was convicted on a plea of nolo  
2 contendere for violating Penal Code section 23152(b) (0.08% or more, by weight, of alcohol in  
3 his blood while driving a vehicle), a misdemeanor. The circumstances of the conviction are that  
4 on or about September 14, 2002, Respondent was stopped, tested, cited, arrested and released by  
5 a California Highway Patrol officer for driving under the influence of alcohol. Respondent was  
6 driving a vehicle with an expired California Driver's License and had a Blood Alcohol Level test  
7 of 0.10%.

8           b. On or about March 2, 1999, in a criminal proceeding entitled *The People*  
9 *of the State of California v. Phillip Arabome*, in Los Angeles County Municipal Court, Pasadena  
10 Judicial District, Case No. 8PA03201, Respondent was convicted on a plea of guilty for violating  
11 Penal Code section 415 (fight or challenge of a fight in a public place), a misdemeanor. The  
12 circumstances are that on or about June 20, 1998, Respondent was arrested after having an  
13 altercation with his wife at her apartment.

14           c. On or about January 23, 1996, in a criminal proceeding entitled *The*  
15 *People of the State of California v. Philip Ebhodache Arabome*, in Los Angeles County Superior  
16 Court, Long Beach Judicial District, Case No. 6LL01467, Respondent was convicted on a plea of  
17 nolo contendere for violating Vehicle Code section 14601.1(a) (driving with a suspended  
18 license), a misdemeanor. The circumstances are that on or about August 6, 1996, Respondent  
19 was arrested and cited for driving a vehicle with a suspended license and no registration.

20                                   SECOND CAUSE FOR DISCIPLINE

21                                   (Unprofessional Conduct)

22           11. Respondent is subject to disciplinary action under sections 2750 and 2761,  
23 subdivision (a), on the grounds of unprofessional conduct as defined by subdivisions of section  
24 2762, as follows:

25           a. Subdivision (b). On or about September 14, 2002, Respondent  
26 administered to himself alcoholic beverages to an extent or in a manner dangerous or injurious to  
27 himself, any person, or the public.

28   ///


b. Subdivision (c). On or about January 16, 2003, Respondent was convicted of violating a statute regarding the consumption or self-administration of alcohol.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License No. 550834, issued to Philip Ebhodaghe Arabome, a.k.a. Philip Ebhodache Arabome, a.k.a. Phillip Arabome.
2. Ordering Philip Ebhodaghe Arabome to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/24/05

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

Complainant

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